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VIA FACSIMILE AND HAND DELIVERY

September 28, 2006

Jeff S. Jordan, Esq.
Supervisory Attorney
Complaints Examination & Legal Administration
Federal Election Commission
999 E Street, NW
Washington, DC 20463

RECEIVED
FEDERAL ELECTION
COMMISSION
OFFICE OF GENERAL
COUNSEL

1 2006 SEP 29 A 10:42

Re: MUR 5789

Dear Mr. Jordan:

As counsel for the Bacardi U.S.A., Inc. Political Action Committee ("BAC-PAC") and its treasurer, Robert M. Higdon (the "Treasurer"), and pursuant to 2 U.S.C. § 437g(a)(1) and 11 C.F.R. § 111.6, I write to you regarding MUR 5789. We respectfully ask that the Federal Election Commission (the "Commission") dismiss the complaint filed by the Citizens for Responsibility and Ethics in Washington ("CREW") for the reasons stated, below.¹

Background

BAC-PAC is the separate segregated fund ("SSF") of Bacardi U.S.A., Inc. ("Bacardi"), an importer and national distributor of distilled spirits and wines. On May 11, 2004, BAC-PAC held a fundraising event for the Martinez for Senate Committee (the "Committee") at Bacardi's corporate headquarters in Miami, Florida (the "Event").

¹ Additionally, we respond on behalf of Bacardi U.S.A., Inc., to the extent that the complaint references any activities by the corporation.

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On August 7, 2006, CREW filed a complaint with the Commission, which is now MUR 5789. The complaint alleges that Bacardi, BAC-PAC and the Committee violated provisions of the Federal Election Campaign Act of 1971, as amended, 2 U.S.C. § 431 *et seq.* ("FECA").

The Event

The Event was by design limited to a small audience of individuals who resided in the South Florida area and who might be interested in supporting the election of Mel Martinez, a former Mayor of Orlando, Florida, and US Secretary of Housing & Urban Development. The Event was to be held in a meeting room at Bacardi's headquarters in Miami, Florida. (Bacardi regularly makes its offices available at no charge to civic, educational and other organizations. In 2004, such organizations used these facilities on approximately 30 occasions.)

The logistics for the Event, including the extension of invitations, were arranged by two individuals employed by Bacardi and who were volunteering their time to the Committee (the "Volunteers"). Expenditures relating to the Event were to be underwritten by BAC-PAC. The Volunteers extended invitations to the Event to individuals within their circle of contacts and friends (the "Invitees"). These were individuals the Volunteers knew on a personal basis who they believed would be interested in supporting the election of Martinez. In all, no more than 25 invitations were extended. It is probable that some of the Invitees forwarded the invitation to their own friends, colleagues and contacts. Contributions collected at the Event by Martinez ranged from \$50 to \$2,000 and approximately \$23,000 was raised.

During the Event, light refreshments were served.² On June 16, 2004, BAC-PAC reimbursed Bacardi for the refreshments served at the Event in the amount of \$473.28 and simultaneously notified the Committee that it had made an in-kind contribution in the same amount to cover the cost of the refreshments at the Event. In its next report to the Commission, BAC-PAC reported the in-kind contribution to the Committee as well as the reimbursement to Bacardi. In a "memo text" appended to the report, BAC-PAC informed the Commission of the following:

On May 11, 2004, the Bacardi USA, Inc., Political Action Committee ("BAC-PAC") hosted an event to benefit the Martinez for Senate Committee at Bacardi USA's offices. Bacardi USA provided refreshments for the event, with a value of \$473.28. Because of a misunderstanding, BAC-PAC did not provide prepayment to Bacardi USA for the refreshments. Payment was made on June 16th, 2004, and has been reported to the Martinez campaign as an in-kind contribution. This transaction is reported herin [sic]. In the future, prepayment will be made to Bacardi USA for any catering or other services it provides to BAC-PAC in connection with any fundraising events that benefit federal candidates.

² The limited refreshments that were served at the Event were provided by Bacardi's in-house catering services and there was no direct payment to any outside vendor or provider

The Complaint

On August 14, 2006, BAC-PAC and the Treasurer were notified by the Commission that CREW had filed a complaint against BAC-PAC and the Committee. Count I of the complaint alleges violations by Bacardi, BAC-PAC and its Treasurer; Counts II and III allege violations by the Committee. In Count I, CREW alleges that Bacardi had violated FECA, to wit, 2 U.S.C. § 441b(a) and 11 C.F.R. § 114.2(f)(1), by providing food and liquor for the Event without receiving advance payment for the fair market value of those goods and services ("Allegation 1") and using a corporate list of vendors to solicit contributions or distribute invitations to the Event ("Allegation 2").

As described below, Bacardi and BAC-PAC immediately remedied the issue described in Allegation 1, and BAC-PAC disclosed the same to the Commission in its next quarterly report. This occurred over two years ago. Bacardi and BAC-PAC deny Allegation 2; it is baseless and without any truth in fact.

Response to the Allegations

Allegation 1

As BAC-PAC has acknowledged in its report to the Commission, Bacardi failed to receive advance payment for the refreshments that it provided for the Event. The refreshments, consisting of distilled spirits, other beverages and hors d'oeuvres, came from Bacardi's in-house inventory and catering staff. The value of the refreshments was ascertained after the Event and was reported to BAC-PAC, which reimbursed Bacardi in the amount of \$473.28. After consulting with outside counsel during the preparation of its July 15, 2004 Quarterly Report, BAC-PAC learned that, since the beneficiary of the Event was the Committee rather than BAC-PAC, the payment should have been made in advance. To remedy the situation, BAC-PAC issued a check to Bacardi in the amount of \$473.28 and listed this amount on its July 15, 2004 Quarterly Report as an in-kind contribution to the Committee, as well as disclosing the circumstances to the Commission in a memo text in the same report.

Bacardi and BAC-PAC point out that the amount of the contribution was minor, the Event occurred more than two years ago, was immediately and voluntarily remedied and reported to the Commission, and there have been no further recurrences of such actions since that time.

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Moreover, Bacardi and BAC-PAC are committed to full compliance with all aspects of FECA and its accompanying regulations. Since the Event, Bacardi and BAC-PAC regularly consult with outside counsel prior to engaging in events, and endeavor to stay abreast of developments and changes to FECA and related regulations.

Allegation 2

CREW erroneously contends that, “[Bacardi used] a corporate list of vendors to solicit contributions or distributed invitations to the May 11, 2004 Martinez for Senate fundraising event.” Bacardi and BAC-PAC deny this allegation; it is baseless and untrue. The Volunteers, acting in their personal capacity and consistent with FECA and its regulations, did not rely upon any corporate list of vendors or any other company list to solicit contributions or distribute invitations to the Event. The Volunteers merely approached individuals who they knew on a personal basis and who they believed would be interested in supporting Mel Martinez’ Senate candidacy. Certainly some of the invitees were individuals with whom the Volunteers interacted on a professional basis from time to time. There, however, was no corporate list of vendors that was used by the Volunteers to invite attendees to the Event and thus there was no cost to be reimbursed in advance by BAC-PAC as alleged in the complaint.

Contributions by Bacardi Employees

CREW alleges that “Martinez for Senate and/or Bacardi engaged in a deliberate effort to obfuscate Bacardi’s role in the May 11, 2004 fundraising event.” While this allegation is not contained in Count I of the complaint, Bacardi and BAC-PAC regrettably believe that it must be addressed, and categorically deny the allegation.

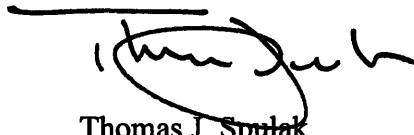
As evidence for this baseless contention, CREW alleges that the term “BUSA” was listed as the employer of several Bacardi employees to obfuscate or otherwise hide the identity of their employer. This is a reckless charge leveled by CREW. “BUSA” is a common acronym for “Bacardi USA” and is used on a regular and widespread basis throughout Bacardi. CREW clearly had no problem identifying “BUSA” as being a term describing “Bacardi USA”; assuredly anyone unfamiliar with the acronym and who wanted more information about it could obtain the information just as readily as CREW. This allegation can serve no other purpose than to attempt to embarrass Bacardi and has no place in the FEC’s complaint process.

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Conclusion

CREW has raised two allegations. The circumstances involved in Allegation 1 were voluntarily reported to and reviewed by the Commission over two years ago. We respectfully request that the Commission recognize the voluntary disclosure that BAC-PAC undertook over two years ago and the minimal amount that is involved. If, however, after reviewing the circumstances of the reimbursement the Commission finds a technical violation of FECA, given BAC-PAC's voluntarily and timely remediation and disclosure, we respectfully request that the Commission exercise its prosecutorial discretion and dismiss that allegation of the complaint. Allegation 2 is baseless in fact and should be dismissed.

Sincerely,

A handwritten signature in black ink, appearing to read "Thomas J. Spulak", written over a horizontal line.

Thomas J. Spulak
Partner

cc: Frederick J. Wilson III, Esq., Senior Vice President, General Counsel and Secretary,
Bacardi U.S.A., Inc.
Robert M. Higdon, Treasurer, Bacardi U.S.A., Inc. Political Action Committee

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